

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA)	
)	
vs.)	Criminal No. 04-176
)	
FREDERICK H. BANKS)	

ORDER

Pending before the Court are three motions. The first two, filed by Defendant, are styled "Motion to Correct Sentence Pursuant to Fed.R.Crim.P. 35(a)," Docket No. 414, and "Motion to Compel Records Pursuant to the Freedom of Information and Privacy Acts," Docket No. 436. The Government's motion, Docket No. 441, seeks to stay this matter pending resolution of Defendant's appeal of his conviction and sentencing to the United States Court of Appeals for the Third Circuit.

The Court has carefully reviewed Defendant's Motion filed at Docket No. 414 and concludes that the issues raised therein either (a) are attempts to re-litigate matters which were conclusively resolved in his jury trial; (b) were addressed during Mr. Banks' sentencing hearing or in Court orders deciding the numerous motions he filed in connection therewith; or (c) are matters to be raised before the Third Circuit Court of Appeals or in a motion to vacate pursuant to 28 U.S.C. § 2255. The Motion at Docket No. 414 is therefore denied.

In his second motion, Defendant seeks an order of court compelling the U.S. Postal Service, the Pittsburgh Field Office of the Federal Bureau of Investigation, the U.S. Attorney's Office, and the Bureau of Prisons to release records which he contends are necessary in order "to prosecute his post-sentencing motion in this case and on direct appeal." Mr. Banks asserts that he requested the records properly and, upon the agencies' failure to respond, exhausted his administrative remedies pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and the Privacy Act, 5 U.S.C. § 552a.

Because Defendant refers only to records which pertain explicitly to him as an individual (as compared to some general matter of public concern), the Court concludes his motion should be considered under the Privacy Act. That Act provides specific remedies for individuals who, like Defendant, contend that a federal agency has failed to respond to their requests for information. The Court concludes that the appropriate course of action is for Mr. Banks to pursue those remedies, rather than attempt to resolve them through a motion before this Court. Defendant's Motion at Docket No. 436 is therefore denied.

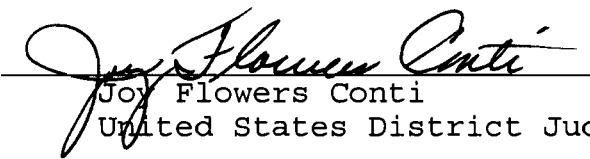
Finally, as directed by the Court, Defendant responded to the Government's motion to stay this matter pending resolution of his direct appeal. (See Docket No. 474, "Response in Opposition to Motion to Stay.") Mr. Banks opposes the Government's motion,

arguing that "any stay would prolong his jail time" and he "should not be made to sit in prison pending the outcome of another appeal."

Defendant is reminded that the prison sentence he is now serving is one which was imposed in another matter over which this Court has no jurisdiction. The sentence imposed in this case will not begin to run until the Court of Appeals vacates his sentence in CR 02-345 or until he has completed the sentence imposed therein. It is unlikely, therefore, that he will "sit in prison" for the sentence imposed in this case until well after one can reasonably expect the Court of Appeals to act. In short, staying this case will have no immediate effect on Mr. Banks' incarceration.

Defendant having offered no substantive reason for denying the Government's motion, it is hereby granted. This case is stayed pending resolution of Defendant's appeal before the Court of Appeals for the Third Circuit. Defendant's motions filed subsequent to the Government's motion, Docket Nos. 467, 477 and 479, are denied without prejudice, as is the Government's motion pending at Docket No. 442. Any motion enumerated may be refiled, if appropriate, after the stay imposed herein is lifted.

SO ORDERED this 21st day of September 2006.


Joy Flowers Conti
United States District Judge

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